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HUMAN RIGHTS COMMITTEE

Forty-sixth session

SUMMARY RECORD OF THE 1178th MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Monday, 19 October 1992, at 3 p.m.

Chairman: Mr. POCAR

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* The summary record of the first part of the meeting appears as document CCPR/C/SR.1178.

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GE.92-18162 (E)

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

1. The CHAIRMAN recalled that, at the end of the Committee's forty-fifth session in July 1992, information had been received in Geneva and in other forums elsewhere about serious and massive violations of human rights in the territory of the former Yugoslavia, especially Bosnia and Herzegovina. The Commission on Human Rights had held a special session on 13 and 14 August 1992 to discuss the situation; it had appointed a Special Rapporteur, Mr. Mazowiecki, to conduct an investigation and to submit a report to it by 26 August 1992. At that session, the Commission had had before it the Committee's comments (CCPR/C/79/Add.4) on the third periodic report of Yugoslavia (CCPR/C/52/Add.9) adopted at the end of its forty-fourth session in New York.

2. The International Conference on the former Yugoslavia was also taking place at the Palais des Nations. He had been approached by one of the Conference Co-Chairmen, who had suggested that a purely legal approach to the human rights situation might help in the quest for a political solution to the conflict.

3. As members were aware, he had drafted a decision of the Committee requesting the Governments of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) to submit reports to the Committee. Since the Committee had not been in session, he had submitted the proposal to all the members for approval in fax or telegrams dated 18 September 1992.

4. In the proposal he had pointed out that action taken by the Committee might be helpful in achieving a solution, notwithstanding the legal problems that a decision taken between sessions involved. He had come to the conclusion that the Committee was authorized to request reports on the basis of its previously held position that, despite the legal problems involved in the succession States, there was no reason to presume that successor States would not continue to apply human rights treaties. In any case, the people in the territories of the former Yugoslavia should not be deprived of the benefits deriving from the application of the international instruments relating to human rights. He had said that the request might be related to articles 6, 7, 9 and 10 of the Covenant, and at the suggestion of members replying to the fax, had added article 12, because of its relevance to ethnic cleansing, and article 20, concerning incitement to national or racial hatred.

5. The text of the decision was the following:

"The Human Rights Committee, through its Chairman acting on behalf of and in consultation with the members of the Committee,

- Deeply concerned by recent and current events in the territory of the former Yugoslavia that have affected human rights protected under the International Covenant on Civil and Political Rights;

- Noting that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant;

- Acting under article 40, paragraph 1 (b) of the Covenant:

1. Requests the Government of the [Republic of Croatia] [Federal Republic of Yugoslavia (Serbia and Montenegro)] [Republic of Bosnia-Herzegovina] to submit a short report, as soon as possible and not later than 30 October 1992, on the following issues in respect of persons and events now coming under its jurisdiction:

(a) Measures taken to prevent and combat the policy of "ethnic cleansing" pursued, according to several reports, on the territory of certain parts of the former Yugoslavia, in relation to articles 6 and 12 of the International Covenant on Civil and Political Rights;

(b) Measures taken to prevent arbitrary arrests and killings of persons, as well as disappearances, in relation to articles 6 and 9 of the International Covenant on Civil and Political Rights;

(c) Measures taken to prevent arbitrary executions, torture and other inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the International Covenant on Civil and Political Rights;

(d) Measures taken to combat advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, in relation to article 20 of the International Covenant on Civil and Political Rights.

2. Invites the Government of the [Republic of Croatia] [Federal Republic of Yugoslavia (Serbia and Montenegro)] [Republic of Bosnia-Herzegovina] to appear, through their representatives, before the Human Rights Committee during the third week of its forthcoming session (2-4 November 1992);

3. Requests the Secretary-General to bring this decision to the attention of the Government of the [Republic of Croatia] [Federal Republic of Yugoslavia (Serbia and Montenegro)] [Republic of Bosnia-Herzegovina]."

6. All the members had responded by endorsing the proposal, thus authorizing him to act on the Committee's behalf. The decision, which carried a 30 October 1992 deadline, had been forwarded to the States concerned on 7 October 1992. No replies had yet been received, but two days of meeting time, 3 and 4 November 1992, had been set aside for considering them if and when they were submitted.

7. Several issues arose in connection with the decision. First, although it was already operative, the procedure used to arrive at that decision had been rather unusual, and it might be appropriate for it to be confirmed in plenary. Second, the Committee must decide how it would deal with the consideration of the reports if they were submitted or the failure to submit them if they were not. In that connection, there were two legal questions on which it should have a common view, namely: the applicability of the Covenant, and; the complex issue of acts by Bosnian Serbs. Further, at least one political issue, the relationship between the Committee's work and the work of the

Special Rapporteur of the Commission on Human Rights was involved. The Committee should discuss whether its action would reduce the impact of the Special Rapporteur's work. The Committee might also consider making an amendment to its rules of procedure to state that, with the agreement of all the members, it would be possible to request a report through its Chairman when the Committee was not in session.

8. If there was no objection, he would take it that the Committee wished to confirm the decision forwarded by fax or telegram on 18 September 1992.

9. It was so decided.

10. In reply to a comment by Mr. SADI, the CHAIRMAN noted that, in order to help members prepare for the consideration of the reports requested, the report of the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/S-1/9) as well as that of the Rapporteur of the Conference on Security and Cooperation in Europe (CSCE) on the situation in Bosnia would be distributed shortly. The Special Rapporteur's second report might be available by the end of October, and the Committee would also receive material from NGOs, including a document to be issued by Amnesty International on the situation in Bosnia and Herzegovina.

11. Mr. MULLERSON endorsed the Chairman's initiative, which would help the people in the territory of the former Yugoslavia. Regarding the problem of State succession, the international instruments relating to human rights, besides being inter-State instruments, conferred rights on individuals, who could not be deprived of those rights in the event of State succession. International control was especially necessary in times of turbulence, which was why the Committee always requested reports during states of emergency. He did not think any State, in such circumstances, would say it was not bound by the human rights treaties. In his view, therefore, the Committee's action would be helpful in clarifying the law of succession, at least in the case of human rights treaties.

12. One problem, in his view, was that the Committee was not considering the situation in areas controlled by Bosnian Serbs, who were not successors to the treaties signed by the former Yugoslavia. Since they were belligerents, they were obliged under international law to observe the laws of war, some of which coincided with the articles of the Covenant. Thus, they might be asked to explain how they complied with the Covenant, not as a successor State, but as an authority in control of a territory.

13. Miss CHANET endorsed the Chairman's initiative. She agreed that, although it was not at all certain that the three States concerned would succeed Yugoslavia in respect of obligations under multilateral treaties, the populations currently under their jurisdiction could not be denied the benefits of human rights. The gravity of the situation in the territories of the former Yugoslavia was beyond imagination, and the Committee could not be deterred by legal obstacles. She believed that reference should also be made to articles 2 and 26, because of their importance in connection with ethnic cleansing and since they were routinely flouted, particularly in Croatia.

14. In her view, the issue of State succession did not a priori prevent the Committee from requesting reports under article 40 from the States concerned. However, the obligation for each State to implement the Covenant in its territory was much more debatable, and it would be interesting to discuss it in the Committee and to see how those States reacted. In particular, given the discussion currently taking place in the General Assembly and the Security Council, she wondered whether Serbia could represent the former Yugoslavia. That was a rather thorny legal question.

15. What disturbed her the most was the way in which that matter had been submitted to the Committee. In fact, the Covenant did permit the Committee to request reports under article 40 at any time. Generally, however, it was the Committee itself that made the request, and that had not been the case. Since that fact would become known, it was important to avoid the Committee being considered as having acted at the request of another. That was all the more important since the Committee was not the only body dealing with the matter, as the Chairman had noted, and it was important that its action should not in any way undermine the work of the Special Rapporteur of the Commission on Human Rights. Moreover, the Secretary-General had stated in his report on 12 October 1992 (S/24657) that in establishing the Commission of Experts requested in Security Council resolution 780 (1992), he had taken account of the mandate of the Special Rapporteur in order to avoid duplication of work. The Committee should therefore target its activities very precisely so as not to be in a doubtful position when it examined the three country reports.

16. Mr. MAVROMMATIS commended the Chairman on his initiative and said that the Committee should not allow legal considerations to prevent it from taking action that might prevent human suffering. Nevertheless, it could not sweep certain problems, including that of State succession, under the carpet: it was true that individuals should not be deprived of protection under the Covenant, but only States parties could be required to submit reports.

17. The Committee's problems would begin when Bosnia and Herzegovina and Croatia did not respond to its invitation, for their doing so would be an indication that they considered themselves bound by the Covenant. In the case of the Federal Republic of Yugoslavia, its claim to be the successor State was presumably sufficient to bind it. Another problem concerned the Committee's treatment of successor States in the light of the position adopted by the General Assembly.

18. The Committee should adhere strictly to the letter of the Covenant for the danger was not one of duplication but of triplication: the Committee, the Commission and the Secretary-General were all concerned mainly with the issues of ethnic cleansing and internment. In that connection, when the Security Council adopted its decision concerning a war crimes commission, the Committee should receive copies as part of the facts it would need to consider in conducting its task. The question of the Bosnian Serbs, for example, was one of facts that could be established.

19. Regarding the possibility of a change in the rules of procedure, he considered that the Committee might decide to draft a rule allowing the Chairman to act on its behalf ex post facto.

20. Mr. LALLAH congratulated the Chairman on his initiative; the Committee would almost certainly have been criticized had it not acted. In his view, the Committee should not be too concerned about other United Nations bodies acting within their competence. The Committee, the Special Rapporteur of the Commission on Human Rights and the Secretary-General were all acting under quite separate mandates, and the question of cooperation did not arise. The question, as he saw it, was whether the Committee could make use of the other bodies' work, and he was quite certain it could as it had often done so in the past.

21. Regarding the question of State succession, it would be a delicate matter to establish the current situation as an absolute precedent. In the case at hand, the former Yugoslavia had been a party to the Covenant, but similar situations existed where that had not been so. It might be embarrassing for a country that had signed a treaty and whose territory had been partially taken away to have another Power claim to exercise jurisdiction over it, at least with regard to the treaty.

22. Mr. HERNDL expressed agreement with the Committee's endorsement of the decision sent by fax on 18 September 1992. As all realized, the Committee was starting on a new path, and it must continue to think progressively. If the States concerned submitted reports, not only would the question of State succession be resolved, but a precedent under international law would be established. If reports were not submitted, that would be an indication that the States did not regard themselves as bound by the Covenant, in which case the Committee could not insist.

23. Rather than legal information, the reports would basically contain facts for the Committee to evaluate. Since those facts would, of necessity, be contradictory, the Committee might consider inviting experts, such as the Special Rapporteur of the Commission on Human Rights, to elucidate them. The Committee's views must be sharp, and it should not waste time over legal niceties in its new way of operating.

24. The extent to which the Bosnian Serbs should be associated with the process was a delicate question, which was all the more reason for the Committee to have before it objective information such as that provided by the Commission Special Rapporteur. The essential goal was to establish the facts, for once the Committee had chosen to involve itself, it must live up to its new approach.

25. Mr. SADI noted that members appeared to agree on the need for a change in the rules of procedure. On a point of organization, in his view all three parties should appear at the same meeting. Although that sounded unorthodox, the adversarial system might facilitate treatment of the situation. He agreed with Mr. Mavrommatis that, since recognition of the Federal Republic of Yugoslavia had been withdrawn, the question arose how to deal with that country.

26. Mrs. HIGGINS said that she did not share the view that the Committee should not allow legal considerations to prevent it from attempting to deal with the situation. The Committee was in a new area, but not one that was prohibited by its rules or incompatible with its objectives as far as

procedure was concerned. As to State succession, she shared the view that the Committee could assist in clarifying the uncertainty in international law over that question. Regarding Serbia, it was essential that no member should say anything that might be construed as treating Serbia and Montenegro as the continuity of Yugoslavia, both because of the General Assembly stance and because to do so would be in contradiction with the stated opinion of the countries of the Conference on Security and Cooperation in Europe. All three States must be treated in the same way, i.e. as States which at the moment had the welfare of human beings in their hands; by virtue of that fact of State succession, the Committee desired a dialogue.

27. Unlike Mr. Herndl, she believed that the Committee was least good at making decisions by itself based on facts. What it was best at, and what it should do, was take the information available and make clear findings as to whether violations of the Covenant had occurred. She also agreed with Mr. Lallah that there was no cause for concern at other bodies doing their job.

28. The Co-Chairman of the International Conference on Former Yugoslavia had probably hoped that the Committee would indicate in legal terms whether the situation in the former Yugoslavia provided a basis for prosecution of war crimes. She did not think that was the Committee's task. There were no doubt points of contact, in that massive violations of some of the articles of the Covenant might constitute war crimes under international law and thus be useful to others later; the Committee's task was to act under the Covenant.

29. Mr. PRADO VALLEJO thanked the Chairman for his initiative and for taking up his own suggestion that article 20 of the Covenant should be mentioned. The Committee could not remain passive in situations of genocide.

30. As to whether the countries of the former Yugoslavia were obliged to respect the Covenant, he believed the Committee had already taken an affirmative position in the second preambular paragraph of the decision of 18 September 1992. Personally, he had some doubts as to whether the three States, especially the Federal Republic of Yugoslavia, would enter into a dialogue with the Committee, although he hoped that they would. The point at issue, however, was what the Committee would do if such a dialogue took place, and what the scope of its concluding comments would be.

31. The obligation to respect human rights was a universal one that transcended treaties. Regarding State succession, the Committee's action showed that it was helping international law to evolve in such a way that the Covenant would remain in force despite the division of a State. He recalled that, when the Committee had considered the report on Hong Kong, it had asked the delegation of the United Kingdom to do all it could to ensure that the Covenant remained in force after Hong Kong was transferred to the jurisdiction of China, despite the fact that China had not ratified the Covenant.

32. As for the Serbian insurgents in Croatia and Bosnia and Herzegovina, they were acting as instruments of the Belgrade Government. They were violating fundamental rights protected by the Covenant and in his view were nothing less than instruments of civil war.

33. He considered that the work of the Special Rapporteur of the Commission on Human Rights did not conflict with that of the Committee, but complemented it. With regard to the question of amending the rules of procedure, he agreed that the Committee should formulate in words the action it had already taken.

34. Mr. AGUILAR expressed agreement with Mrs. Higgins about legal considerations. By its decision of 18 September 1992 the Committee had already begun to make law, and in a revolutionary manner.

35. As to its position towards Serbia and Montenegro, the Committee should bear in mind the clear decision taken by the international community, which included States parties to the Covenant. As Mrs. Higgins had said, Serbia and Montenegro should be treated from the point of view of State succession, but on a strictly equal basis with Bosnia and Herzegovina and Croatia. In fact, he questioned the use of the term "Federal Republic of Yugoslavia".

36. He was less concerned with whether the three States agreed to the Committee's request, since in any event the Committee could not turn back. Regarding the proposal to amend the Committee's rules of procedure, he agreed with those who had pointed out that the change had already been made; the Committee would have to consider a number of other urgent changes in its procedures during the current session.

37. The CHAIRMAN said that he had used the formula "Federal Republic of Yugoslavia (Serbia and Montenegro)" in the decision of 18 September 1992 because that was the expression used in Security Council resolutions.

38. Mr. WENNERGREN commended the Chairman's initiative. He agreed with Mrs. Higgins and Mr. Aguilar that the three States should be treated equally since they had all inherited the former Yugoslavia's obligations under the Covenant. The situation regarding the Bosnian Serbs was perhaps not as complex as it appeared. The Serbs in Bosnia represented a rebellious faction for which Bosnia did not have to take responsibility, despite the fact that they were under its jurisdiction. Similar situations existed in many other countries.

39. He disagreed with Mr. Herndl's view that if the States did not respond to the Committee's request, it could not insist. In fact, the Committee should continue its action by sending reminders and trying to induce those States, through its words and authority, to respond to its request.

40. Amending the Committee's rules of procedure might be difficult. He did not see where such a rule would be placed, and no draft had been produced. It might be better to adopt a case-by-case approach. The Committee had established a precedent, but there was no need to formalize it.

41. Mr. ANDO thanked the Chairman for his initiative. Regarding State succession, he agreed with those speakers who had pointed out that the Committee had made its attitude clear in the second preambular paragraph of the decision of 18 September 1992. He also agreed with those speakers who had emphasized the need for the Committee to remain within the bounds of the

Covenant, and not to give the impression that its main mission was to consolidate facts. He was not opposed to inviting an expert to come before the Committee, but it should not lose sight of its mission.

42. He agreed with those speakers who had stressed that the Committee should not give the impression that it regarded Serbia and Montenegro as the successor to Yugoslavia. However, it must be careful not to be inconsistent with its previous action in inviting Yugoslavia to its forty-fourth session.

43. Regarding the rules of procedure, he said that since the Committee had taken action, it should reflect on its rules of procedure, but he agreed with Mr. Wennergren that formal revision might not be absolutely necessary.

44. Mr. SERRANO CALDERA endorsed the Chairman's initiative. The Committee had taken an important step that might lead to innovations in international law; however, its action must always be based on the Covenant. Regarding State succession, he agreed that the three States in question should be given equal treatment. If they replied to the Committee's invitation, they would be assuming a legal position, and one of the Committee's concerns would be eliminated. In any event, State succession should be viewed as a matter of the acquired rights of the population of the State that had ratified the Covenant, which were not diluted when a State was divided.

45. Regarding coordination with the Special Rapporteur of the Commission on Human Rights, he agreed with Mr. Lallah that the Committee was an autonomous body whose mandate derived from the Covenant. However, that did not prevent it from establishing a mechanism for coordination with the Special Rapporteur that might help it strengthen its own judgements.

46. Mrs. HIGGINS said that Mr. Prado Vallejo had raised an important point concerning the Committee's handling of the concluding phases of the consideration of the reports. She hoped that it would reach very precise conclusions, looking at issues of justification and liability above all. In that connection, she would like to know whether there would be a separate rapporteur for each State's report.

47. The CHAIRMAN thanked the members for their support and kind words to him. All appeared to agree that the issue of State succession was not a problem at the moment. As has already been pointed out, the issue was already addressed in the second preambular paragraph of the decision of 18 September 1992, but he had felt it would be useful to have an exchange of views on a difficult problem of international law. The exchange had also enabled the Committee to consider the matter of continuity, and everyone had agreed that the three States should be dealt with on an equal basis. He had deliberately avoided mentioning any previous action by the Committee with regard to Yugoslavia in order to avoid giving the impression that the current activity was a follow-up to the Committee's consideration of the third periodic report of Yugoslavia (CCPR/C/52/Add.9) in April 1992.

48. Replying to a point raised by Miss Chanet, he said he had not included a reference to articles 2 and 26 of the Covenant for two reasons; the first was that the decision should not be too long and the second was that the substance of those articles, especially article 2, was implicit in all the points concerning which the Committee was asking for information.

49. Relations with other bodies did not seem to be cause for concern; the Committee had a very specific mandate and other bodies established facts rather than legal evaluations. In a number of previous cases, such as that of Afghanistan, the Committee had made use of the reports of special rapporteurs of the Commission on Human Rights and had inserted that information into the legal framework of the Covenant. The points that the Committee was considering were also addressed by the Commission Special Rapporteur in his report on the situation in the former Yugoslavia (E/CN.4/1992/S-1/9), which he had read before drawing up the list of issues.

50. The Committee was breaking new ground in that it was exercising its competence in attempting to monitor emergency situations, which it had been criticized in the past for failing to do. Recent developments in the international law situation had now made it possible for it to do so.

51. The majority of the Committee seemed to feel it would be advisable to draft a new rule of procedure. He would therefore prepare a draft for discussion later on. Regarding the concluding phases, he wondered whether Mr. Prado Vallejo had any suggestions in that regard.

52. Mr. PRADO VALLEJO said that Mrs. Higgins had raised a valid point, but that it might be preferable to see whether the States concerned responded to the Committee's invitation before appointing a rapporteur. In any event there should be only one rapporteur for the three States, in order to avoid any contradictions.

53. Mr. HERNDL said it was obvious that the Committee's actions should at all times remain within the bounds of the Covenant. However, it would need to have some certainty concerning the facts, which in the case at hand were more important than in other reports which contained more legal information. It was for that reason that he had suggested inviting the Special Rapporteur of the Commission on Human Rights. That would open a new path for the Committee in ascertaining facts regarding situations, and he did not think that the members should dismiss the suggestion out of hand.

54. Miss CHANET agreed with Mr. Herndl that the Committee must stay within the context of the Covenant; however, the situation it was examining was an unprecedented one, and the Committee would require information in order to conduct its work. The usual NGOs had informed the Committee that they had very little information of the type they usually provided. The findings of the Special Rapporteur of the Commission on Human Rights would be valuable; unfortunately, however, he had not visited the civilian internment camps and did not even have a list of those camps. Perhaps the ICRC could help in that respect. She trusted that, in addition to the report of the Rapporteur of CSCE, the secretariat would obtain all available information on the violence in the former Yugoslavia.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

55. The CHAIRMAN read out the names of the rapporteurs entrusted with preparing draft concluding comments on the reports to be considered during the current session.

56. If there was no objection, he would take it that the Committee endorsed the appointment of the rapporteurs.

57. It was so decided.

58. Mr. PRADO VALLEJO, referring to the complicated situation of human rights in states of emergency, drew attention to a recent development that would have repercussions throughout Latin America. Peru, wishing to restore the death penalty, had recently denounced the Inter-American Convention on Human Rights, despite the fact that the Convention itself did not provide for such an act. That situation had given rise to debate in Latin America, especially among the signatory countries of the Convention, on whether a human rights treaty could be denounced when it contained no provision to that effect.

59. Mrs. HIGGINS said that the extended meeting had helped to clarify ideas relevant to the Committee's work. She proposed that the Committee should set aside the early evening of the first day of each session to deal with any pressing problems and to exchange views.

60. The CHAIRMAN agreed that the Committee was free to decide to use the first evening of its sessions to consider issues that might have an impact on the work on the session. In the present instance, all the issues discussed were in line with those raised at the recent Meeting of Chairpersons of Human Rights Treaty Bodies.

61. One last question to be settled was the issue of requests by countries to present video tapes or films in connection with the consideration of their reports, as Peru had done at the forty-fifth session. He recalled that a proposal had been made at that session to ask the Working Group to look into that question and to make recommendations to the Committee, including a possible amendment of its rules of procedure. However, it had subsequently been decided to consider the issue at the current session.

62. Mr. LALLAH said that as a matter of principle the Committee should not allow the showing of videos at its sessions, because videos were open to abuse that would be beyond the control of the Chairman. The spirit of the Committee's rules of procedure was clear: reports should be in writing, supported orally by the members of the delegation concerned.

63. The CHAIRMAN replied that it might nevertheless be advisable to amend the rules of procedure to stipulate that only written reports would be considered. If a delegation wished to show a video tape, it might do so outside the times scheduled for the Committee's meetings; members could attend on an optional basis.

64. If there was no objection, he would take it that the members were in agreement with that procedure.

65. It was so decided.

66. The CHAIRMAN invited members to consider the possibility of a further change in the rules of procedure to provide for the handling of urgent matters that arose when the special rapporteurs were absent. Alternate special rapporteurs might be appointed or the Chairman might be empowered to replace the special rapporteur in urgent situations. He would submit a draft rule to that effect for the consideration of the Committee.

The meeting rose at 8.45 p.m.